

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DESHAWN HICKS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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Hon. Joseph H. Rodriguez, U.S.D.J.

Civil Action No. 20-cv-7053 (JHR)

MEMORANDUM ORDER

It appearing that:

1. Currently pending before this Court is Petitioner Deshawn Hicks's ("Petitioner") *pro se* motion to vacate sentence pursuant to 28 U.S.C. § 2255 ("Petition"). [Dkt. No. 1.]

2. Before the Court conducted its initial screening, Respondent filed an answer to the Petition. [Dkt. No. 2.] Unfortunately, the Court had not yet issued a *Miller* notice, which is required for Petitioner's first § 2255 petition. *See United States v. Miller*, 197 F.3d 644 (3d Cir. 1999). Therefore, at this time, the Court will provide Petitioner with the following notice and opportunity:

You have filed a pleading challenging your federal conviction and incarceration. Because federal law requires a District Court to dismiss a second or successive § 2255 motion, *see* 28 U.S.C. § 2255(h), 2244(a), a § 2255 movant must include on the face of his or her first § 2255 motion all available federal claims. *See United States v. Miller*, 197 F.3d 644 (3d Cir. 1999); 28 U.S.C. § 2255 Rule 2(b)(1) (requiring the motion to vacate to "specify all the grounds for relief available to the moving party"). In accordance with *United States v. Miller*, *supra*, you have two options at this time:

a. Have your pending § 2255 Motion [Dkt. No. 1] considered as your all-inclusive § 2255 motion, or

b. Withdraw the § 2255 Motion and file an amended § 2255 motion, which includes all available federal claims, provided the amended all-inclusive § 2255 motion is filed within 45 days of the date of the entry of this Order.

If you do not respond to this Order in writing within 45 days of the date of the entry of this Order, then this Court will consider your pending § 2255 Motion as your all-inclusive § 2255 motion.

3. Upon receipt of any amended petition from Petitioner in response to this Order, the Court will permit Respondent to file an amended answer.

THEREFORE, it is on this 11th day of December, 2020;

ORDERED that within 45 days of the date of this Order, Petitioner shall either notify the Court in writing that he intends to have his pending § 2255 Motion considered as his all-inclusive § 2255 motion, or submit an amended § 2255 motion, which includes all available federal claims; if Petitioner does not respond within 45 days, the Court will consider his pending § 2255 Motion [Dkt. No. 1] to be his all-inclusive Motion; and it is further

ORDERED that the Clerk of the Court shall send a copy of this Order to Petitioner by regular U.S. mail.

/s/ Joseph H. Rodriguez
HON. JOSEPH H. RODRIGUEZ
United States District Judge